IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 1810 (S/S) OF 2005
(Interim Relief Application No. 2092 of 2006)

Kehsav Dutt age 75 years S/o Late Durga Dutt
R/o Fire Brigade Service Station Nainital Road.
Haldwani, District Nainital. ……..Petitioner

Versus

1. The State of Government through the Secretary Local self Government, Government of Uttaranchal at Dehradun.
2. The State of U.P. through the Secretary Local Self Government U.P. at Lucknow.
3. Director, Koshagar Avem Vitta Sewayan, Local Fund Account Audit Department, Uttaranchal, 23, Laxmi Road, Dehradun.
4. Executive Officer, Nagar Palika Parishad Haldwani, District Nainital. …... Respondents

09.03.2006

Sri B.D. Upadhyay, learned counsel for the petitioner.
Learned standing counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri B.D. Upadhyaya, Learned Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 15.04.2004 passed by respondent No. 4 annexed as annexure No. 4 to this writ petition.

Briefly stated the petitioner was working in the Nagar Palika, Haldwani District Nainital on the post of driver and he retired from the service after attaining the age of superannuation on 31.12.1986. After retirement the petitioner approached the respondent No.5 for his retirement benefits in accordance with the provision laid down in the rules known as "U.P. Nagar Palika Decentralize Retirement Benefits Rules."

Petitioner has submitted that he has tendered so many representations before the respondent No.5 for getting the retrial benefits. He has also filed a claim petition No.9 of 1995 before the State Public Service Tribunal, Lucknow. The claim petition was allowed by the Tribunal vide judgment dated 22.03.999 and

respondents also were directed to take in respect of the retirement benefits admissible to the petitioner and pay the same after concluding all the formalities and further directed to comply the directions within a period of four months with effects from the date of receiving the certified copy of the judgment.

In the light of the Tribunal's judgment, the petitioner has submitted representations to the Chairman and Executive Officer of the Nagar Palika to pay the retirement benefits to him but all in vain.

After the creation of the State of Uttaranchal, petitioner has filed writ petition No. 243 (S/S) of 2001 before this Hon'ble for his retirement benefits, the writ petition was allowed on 20.11.2003 and copy of the order was served on the respondents but no action was taken. Thereafter the petitioner has filed a Contempt Petition No.41 of 2004 before this Hon'ble Court. During the pendency of the writ petition, the Executive Officer, Nagar Palika Parishad, Haldwani were sent the pension papers after completing the formalities to the respondent No.4 Director, Koshagar Avem Vitta Sewayan, Local Fund Account Audit Department, Uttaranchal as such the contempt petition was dismissed.

The respondent No.4 was sanctioned the pension and gratuity vide order dated 15.04.2004 but it was illegally mentioned therein that the house allotted to the petitioner shall be vacated and the rent shall be recovered from him.

Petitioner has submitted that the wife of petitioner Smt. Anandi Devi applied for 97.53 square of land from the municipality and the same was granted to her on 05.05.67 and she has constructed a house over that land and since then the petitioner and his family therein. After retirement when the petitioner demanded his retirement benefits the respondent Municipal Board tried to evict the petitioner and his family from the house constructed by him and as such the wife of the petitioner filed a civil

suit No. 243 of 1993 for permanent injunction before the court of Civil Judge (S.D.), Nainital which was partly decreed on 28.4.2001 with a direction that the plaintiff shall not be evicted from the land in dispute except in accordance with law.

The petitioner has further submitted that such action of the respondents in not paying the retirement benefits to the petitioner on the ground that he is occupying a house of the municipality is absolutely illegal, arbitrary and bad in law where as the fact remains that the litigation of the house is pending between his wife and the Municipality.

Standing Counsel has filed counter affidavit on behalf of Respondent No.4 Relevant paragraph is quoted below:-

"*िनदे ाालय के पंत्राक 05 दिनांक 15.4.2004 द्वारा श्री जो ी सेवा निवृत्त चालक के पें ान / उपादान संस्तुति की गयी थी जिसमें अभ्यक्ति 01 को निरस्त मानते हुए िनम्नलिखिल अभ्युक्ति के साथ इनके पें ान प्रकरण पर निस्तारण वरीयता के आधार पर सुनि चत करने का कष्ट करें:–*

श्री जो ी को यदि पालिका द्वारा आवास दिया गया हो और वह सेवा निवृत्ति के पश्चात खाली न किया गया हो तो उस स्थिति में सेवा निवृत्ति के दिनांक से मात्र 04 माह का किराया अदेयता में द ार्ति हुए पें ान प्रकरण पर स्वीकृति प्रदान कर दी जाय। शेष माहों के किराये की वसूली के लिए पालिका स्वंय सक्षम है। ''

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the order dated 15.04.2004 passed by he respondent No.4 and directed the respondents to give the retirement benefits admissible to the petitioner in accordance with law within a period of 6 weeks from the dated of production of certified copy of this order in accordance with law.

Consequently, the writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

09.03.2006
Jain